

RAFAEL COSTALES
(Appellee)

v.

S.D. WARREN CO.
(Appellant)

and

CCMSI
(Insurer)

Decided: December 11, 2013
Conferenced: November 20, 2013

Panel Members: Hearing Officers Knopf, Goodnough, and Stovall
By: Hearing Officer Goodnough

[¶1] S.D. Warren Company appeals from a decision of a Workers' Compensation Board hearing officer (*Collier, HO*) granting Rafael Costales's Petition for Review and awarding him total incapacity benefits. The hearing officer found that Mr. Costales successfully (1) proved a change of medical circumstances based on a recent surgical procedure, thereby opening for review the previously established compensation payment scheme, and (2) rebutted the retiree presumption set forth in 39-A M.R.S.A. § 223 (2001) based on a finding of total physical incapacity.

[¶2] Contrary to S.D. Warren's contentions, the hearing officer did not err when concluding that Mr. Costales's surgery constituted changed circumstances

sufficient to permit a re-examination of the prior compensation payment scheme. *See Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 7, 787 A.2d 144. Further, the hearing officer neither misconceived nor misapplied the law when determining that Mr. Costales met his burden of rebutting the retiree presumption based upon findings of fact that included a competent medical opinion establishing total physical incapacity. *See Gushee v. Point Sebago, Me.* W.C.B. No. 13-1, ¶ 6 (App. Div. 2013); 39-A M.R.S.A. § 321-B(2) (Supp. 2012).

The entry is:

The hearing officer's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2012).

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